

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5694 of 1989

with

SPECIAL CIVIL APPLICATION No 432 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KANUBHAI P PATEL

Versus

GOVT. OF GUJARAT

Appearance:

1. Special Civil Application No. 5694 of 1989
MR JD AJMERA for Petitioners
MR PREMAL JOSHI for Respondent No.1 & 2
None present for other Respondents
 2. Special Civil Application No 432 of 1998
MR JD AJMERA for Petitioners
MR PREMAL JOSHI for Respondent No.1, 2, & 3
MR DIPAK DAVE for Respondent No.4
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Date of decision: 19/09/2000

ORAL JUDGEMENT

#. As these two matters are identical and filed in the court for the same relief, the same are taken up for hearing together and are disposed of by this common order. The facts and grounds of challenge to the action of the respondents are taken from special civil application No.432/98.

#. The petitioner is a public trust and it runs and manages Shri J.J.Shah Kumar Mandir Primary School at Viramgam. It is recognised and grant-in-aid school. There are about 1750 students, 31 classes and 31 teachers in the primary section of the school. It is receiving grant-in-aid from the year 1987 in accordance with Rules. The petitioner has also appointed non teaching staff in the school to do clerical and other work. The Government does not give grant towards the salary of non teaching staff. It is the grievance of the petitioner that the Government of Gujarat though has prescribed set up for non teaching staff in the secondary schools, looking to the strength of students, for the primary schools, it has not prescribed any set up for clerical staff. On 18th June, 1987, the petitioner addressed a letter to the District Education Officer requesting him to give grant towards the salary of non teaching staff working in the primary school. The request aforesaid of the petitioner was rejected by the respondent under its letter dated 18.2.88. With identical grievance and prayer, another institution filed special civil application No.4538/84 in this court. This petition came to be decided by this court on 4th December, 1994. This court has issued Mandamus to the State of Gujarat to consider the case of that petitioner-school for release of grant of expenditure actually incurred by the petitioner-school for non teaching staff, i.e. clerical staff as well as class-IV staff. Against this judgment of this court, appeal has been filed and that has also been dismissed on 4.12.96. The petitioner stated that one of the employee of the petitioner-school filed special civil application No.2989/90 in this court for relief of grant for expenditure incurred by the school for non teaching staff and that petition was decided on 29.2.96 directing the Government to dispose of the application of the employee. On 9.10.97, the representation of the employee of the petitioner-school came to be rejected by the Director of Primary Education on the ground that in view of the amended Rules, there is no policy to give such grant to

the primary schools towards its non teaching staff. The State Government amended Bombay Primary Education Rules and substituted the word "teacher" in place of "staff" and thereby made an attempt to deny benefits as conferred by judgment of this court and confirmed by Hon'ble Supreme Court. As it is what the petitioner contended, this has been done on 9.10.96. Hence this petition. In the petition, the petitioner is praying for setting aside the Notification dated 9.10.96 being ultra-vires and further for direction to the State of Gujarat to release grant towards the salary of non teaching staff of the petitioner-school with effect from the date on which the petitioner has employed non teaching staff in the school including all the arrears.

#. Reply to the special civil application has been filed by respondent No.2 and there only defence has been taken that in view of the amendment made in the Rules, grant can only be given for teaching staff of the primary school and not for the non teaching staff, i.e. clerical and class-IV staff.

#. The learned counsel for the petitioner raised manifold contentions challenging the validity, legality and propriety of the aforesaid Government Notification amending the Rules but in view of the order which I propose to pass in the matter, I do not consider it necessary to refer to any of the contentions and decide the same.

#. In every primary school, it is difficult to accept that there may not be need for non teaching staff. In some of the primary schools, looking to the strength of students and teachers, there may be necessity of clerical and class-IV employees. This blanket decision taken by the Government by amending the Rules not to give any grant for clerical and class-IV employees in the primary schools prima-facie seems to be not justified. However, for this, the State Government may take a policy decision under which it may provide the requisite number of non teaching staff under the head of clerks and class-IV staff with reference to the strength of students and teachers. Prima-facie what the learned counsel for the petitioner contended that in the matter of grant to be given for non teaching staff to primary schools and secondary schools, a hostile discrimination has been made has some merit and substance. In a primary school where there are students numbering 1750, 31 classes and teachers are also 31, there may be need for non teaching staff to do clerical and other work. In such matters, practical approach and approach befitting to smooth

working of schools is to be taken care of and considered. Unless adequate clerical (non teaching staff) is provided to primary schools where need is there, it may hamper efficient, adequate and effective education to the students. For the absence of non teaching staff, naturally some of the teachers are to be used for doing clerical work and it will result in disturbing teaching programme in the school. These matters are to be first considered by a High Level Committee to be constituted under the chairmanship of the Chief Secretary of the State of Gujarat with three other members not below the rank of Secretaries from the Finance Department, Education Department and Law Department. These are the matters which are to be taken at the pre-litigation stage. We are talking everyday of taking care of the matters at a pre-litigation stage and in service matters, this is more necessary looking to the number of petitions which are coming up in this court as well as applications and appeals before different Tribunals of the employees and officers.

#. In the result, both these special civil applications are disposed of in the terms that for the grievances made in these special civil applications the petitioners may file a detailed representation to the Chief Secretary of the State of Gujarat and in case such a representation is filed by petitioners, the Chief Secretary shall constitute a High Level Committee under his Chairmanship and three other member Secretaries from Finance Department, Education Department and Law Department and shall decide the same within a period of two months from the date of receipt thereof. Where the claim of the petitioners are not acceptable, a reasoned order be passed and a copy of the same be sent to the petitioners by registered post A.D. In case the order goes adverse to the petitioners on their representations, liberty is granted to them for revival of these special civil applications by filing a simple note. Rule stands disposed of accordingly in both petitions. No order as to costs.

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(sunil)